IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 31214 of 2005(N)

PETITIONER:

SUSEELA, W/O.LATE SANKARAN APPI,
KOYIKKAL HOUSE,
THATTAPPALLIL, ERAMALLOOR.P.O,
CHERTHALA, ALAPPUZHA DIST.

BY ADV. SRI.K.K.SATHEESH,
SRI.P.R.SUDHAKARAN NAIR.

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS DIVISION, LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI-110 003.**

2. **STATE OF KERALA, REPRESENTED BY THE SECRETARY, GENERAL ADMINISTRATION (FFP.A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

BY ADV. SRI.SUBAL J.PAUL, CGC, FOR R1,
GOVT. PLEADER SRI. V.T.K. MOHANAN FOR R2.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.31214/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE EXTRACT OF CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ALONGWITH COVERING LETTER ISSUED BY THE SUPDT. OF CENTRAL PRISON, TRIVANDRUM DTD. 20/06/1973.

EXT.P.2: COPY OF THE LETTER NO. F6-2733/73 DTD. 04/08/1973 ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA INVITING THE PETITIOENR'S HUSBAND TO RECEIVE THAMRAPATHRA.

EXT.P.3: COPY OF THE ORDER NO. 19/66/72 FF.VIII DTD. 06/12/1975 ISSUED BY THE R.1. TO THE PETITIONER'S LATE HUSBAND.

EXT.P.4: COPY OF THE COMMUNICATION NO. 19/66/72-FF VIII DT. 26/11/1977 ISSUED BY THE R.1. TO THE PETITIONER'S LATE HUSBAND.

EXT.P.5: COPY OF THE ORDER NO. H4/37625/91 DTD. 19/08/91 ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA.

EXT.P.6: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR SSS PENSION DT. 12/06/1998.

EXT.P.7: COPY OF THE CO-PRISONER CERTIFICATE ISSUED BY SRI. P.A. SOLOMON EX-MP DT. 10/05/73.

EXT.P.8: COPY OF THE NARC ISSUED BY THE SUPDT. OF SUB JAIL, ALLEPPEY DT. 11/07/1973.

EXT.P.9: COPY OF THE LETTER NO. 119/2/GENL(1)/98-FF/SZ DT. 27/08/1998 ISSUED BY THE R.1.

RESPONDENT'S EXHIBIT:

EXT.R1: COPY OF THE LETTER DT. 01/08/2006 OF UNION OF INDIA.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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W.P.(C).NO.31214 of 2005-N

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Dated this the 23rd day of August, 2007

JUDGMENT

The petitioner is the widow of late Shri Sankaran Appi who was a prominent freedom fighter who had participated in the Punnapra – Vayalar Movement during the freedom struggle. On account of his participation in the said struggle, he had undergone under-trial imprisonment for a period of one year from 3.6.1122 ME to 4.6.1123 ME in the defunct sub jail at Alappuzha in case No. P.E.5/1122 ME. It is stated in the writ petition that thereafter, the Addl. Sessions Judge, Trivandrum convicted and sentenced him to undergo R.I. for three months vide judgment dated 5.6.1123ME in Sessions Case No.1/1123 ME, in which he was the 13th accused. Thereafter, he had undergone imprisonment in the Central Prison, Trivandrum for the period from 5.6.1123 ME to 30.8.1123 ME till he was released under Government Order vide G.O.D.Dis. No.1216/48/Judl. Dated 10.4.1948. Ext.P1 is the true extract of the convict register of Central Prison, Trivandrum. He was honoured by giving 'Thamrapathra' by the Central Government as evidenced by Ext.P2 letter of the District Collector inviting him to receive 'Thamrapathra' to the function held for that purpose.

2. The petitioner was granted pension by the Central Government as per Ext.P3. Thereafter by Ext.P4 communication, it was suspended on the ground that the sufferings of the petitioner's husband was not related to freedom struggle, as the Punnapra – Vayalar struggle was not recognised by the Government of India as part of freedom movement.

3. Punnapra – Vayalar struggle was recognised as part of National Freedom Struggle by the Government of India for the purpose of grant of SSS Pension, with effect from 20.1.1998 and thereafter Ext.P6 application was submitted by the petitioner for grant of SSS Pension. Her late husband died on 1.10.1990. Apart from producing Ext.P1, she had also produced a co-prisoner's certificate issued by Shri P.A. Solomon Ex.M.P. And NARC from Sub Jail, Alappuzha. By Ext.P9, the petitioner was informed that they are awaiting the report of the State Government.

4. In the counter affidavit filed by the first respondent, it is averred that they have forwarded Ext.R1 letter to the State Government requesting for copy of the original application and other relevant papers relating to the petitioner's late husband. The genuineness of Exts.P3 and P4 are not disputed therein.

5. Learned counsel for the petitioner submitted that in the light of the fact that the petitioner's late husband was granted pension for the very same sufferings as per Ext.P3, and after Punnapra – Vayalar struggle was

recognised as part of National Freedom Struggle, there is no justification to deny pension to the petitioner. Learned counsel for the petitioner relied upon the decision of a learned Single Judge of this court reported in **Krishnankutty v. Union of India** (2003 (1) KLT 21) in support of the above proposition. That was also a case where the pension was granted to the applicant therein, which was later cancelled on the ground that Punnapra – Vayalar struggle was not recognised as part of the freedom struggle and pursuant to the recognition of the said movement, a fresh application was submitted. After referring to the various aspects, it was held by the learned Single Judge that when, on the first time pension was sanctioned, it necessarily implies that the authority concerned was totally satisfied and convinced as to the eligibility of the petitioner to receive pension. In fact, it appears that an objection was later taken that the petitioner therein was not eligible for grant of pension. This contention was not accepted by this court in view of the fact that originally it was sanctioned by the Central Government after finding the eligibility.

The same position emerges on the facts of this case also. Pension was sanctioned to the late husband of the petitioner as per Ext.P3 and the same was suspended as per Ext.P4. It is admitted in the counter affidavit that Punnapra – Vayalar struggle was recognised as part of National Movement for the grant of SSS Pension with effect from 20.1.1998.

6. The counter affidavit of the respondents shows that what was sought from the State Government was the original papers and details of the petitioner's late husband. Since the pension was already sanctioned to the late husband of the petitioner, the question of conducting a fresh enquiry in the matter does not arise at all. What is required is to sanction pension in view of Ext.P6 application submitted by the petitioner. To enable the Central Government to do so, the State Government will have to forward the relevant papers as required for in the communication produced as Ext.R1, along with the counter affidavit filed by the first respondent.

7. Therefore, the writ petition is allowed. It is declared that the petitioner is entitled for grant of SSS Pension based on Ext.P3 order, as the widow of the freedom fighter. The petitioner is also entitled for arrears of pension with effect from 20.1.1998, the date from which Punnapra – Vayalar struggle was recognised for the purpose of grant of SSS Pension as allowable under the Scheme to the widow. Appropriate orders shall be passed by the first respondentwithin a period of two months from the date of production of a copy of this judgment. To enable the first respondent to pass orders the second respondent is directed to forward the relevant papers

to the first respondent within one month of the production of a copy of this judgment.

(T.R. Ramachandran Nair, Judge.)

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